

CHAPTER 2 GENERAL RULES OF PROCEDURE

486—2.1(10A) General procedures. The following rules of general procedure will apply to all appeals and hearings conducted by the employment appeal board. Unless otherwise specified by rules within the chapters on particular areas, these rules apply. If no rule covers a specific provision, the rules of civil procedure shall be used to provide guidance.

486—2.2(10A) Definitions. Definitions as used herein by the employment appeal board are as follows:

“Address of record” means address listed in the Iowa workforce development department’s unemployment decisions records.

“Aggrieved person” means an individual or company who has received an adverse ruling from an administrative law judge in a proceeding subject to appeal board review. It also means a company who has received a citation or citations from an OSHA inspector and wishes to contest that citation or citations. It also means a contractor who has been cited for failing to comply with the contractor registration laws and wishes to contest the citation.

“Appeal” means any instrument used to notify the employment appeal board that the individual wishes to appeal a decision of an administrative law judge. The instrument must be in writing and signed by the individual or an authorized representative. If the instrument is signed by an authorized representative, the person or party filing the appeal must be designated in the document.

“Appeal board” means the employment appeal board.

“Claimant” is an individual who has filed a request for determination of insured status or a new claim for unemployment insurance benefits.

“Employer” is an individual, partnership or corporation who employed the claimant in the claimant’s base period, or was the last employer of the claimant or offered comparable suitable employment to a claimant, which the claimant refused.

“Filing date” means the date prescribed by statute or rule for an action required to be taken. The filing date will be the date the document is postmarked, if filed by U.S. Postal Service; the date of the faxed document, if filed by facsimile transmission; the date of the document, if the postmark is illegible; or the date received, if filed by any other means. If filed by fax, the original copy of the document shall be mailed to the employment appeal board. If the document is filed by U.S. Postal Service and the document contains both a postal meter mark and a U.S. Postal Service postmark, the U.S. Postal Service postmark shall be used to determine the filing date.

“Good cause” cannot be defined in precise language because what is good cause in one circumstance may not be good cause in a different circumstance. It may be generally defined as that reasonable excuse given, under the circumstances of the case, to excuse an action which was not taken when it should have been taken. As an example, good cause for not appearing at a scheduled hearing would be if the individual had not received the notice of hearing in time to participate. The individual alleging good cause has the burden to establish that good cause did exist to excuse the failure to take the needed action.

“New or additional evidence” means any evidence, testimonial or documentary, which is filed after the date of the decision of the administrative law judge and which, if due diligence had been used, could have been presented to that administrative law judge. A request to file new or additional evidence, or both, must be made within ten days after the mailing of the notice to the parties that an appeal has been filed. Such request shall set forth the nature of the evidence, the materiality of such evidence, and the reasons why it was not introduced at the hearing before the administrative law judge.

“Remand request,” as interpreted by the employment appeal board, means a document indicating that the individual filing the document wishes the matter to be returned to the administrative law judge for a new hearing.

“Work product” means those documents produced by the agency which describe or portray the “mental impressions,” conclusions, opinions, or legal theories concerning the determination made by the agency as a result of agency investigation or inquiry.

486—2.3(10A) Ex parte communications.

2.3(1) An ex parte communication is an oral or written communication relating directly to the facts or legal questions at issue in a contested case proceeding which is made by a party in interest to the employment appeal board without the knowledge of or outside the presence of the other parties and with the object of affecting the outcome of the case.

2.3(2) Ex parte communication does not include:

- a. Statements given by the parties to claims representatives for use in making the initial determination;
- b. Statements contained in any party’s appeal from an initial determination;
- c. Statements relating only to procedural or scheduling matters, such as requests for discovery, subpoenas, postponements or withdrawals of appeals; or
- d. Requests for clarification of a legal issue involved in a contested case, but only to the extent of requesting information on the applicable law and not as to matters of fact.

2.3(3) Unless required for the disposition of ex parte matters specifically authorized by statute or rule, no party or its representative shall communicate directly or indirectly with the employment appeal board concerning a contested case before the board, nor shall any member of the employment appeal board communicate directly or indirectly with a party or its representative concerning any such issue of fact or law in a contested case unless:

- a. Each party or its representative is given written notification of the communication. Such notification shall contain a summary of the communication, if oral, or a copy of the communication, if written, as well as the time, place and means of communication.
- b. After notification, all parties have the right, upon written demand, to respond to the ex parte communication, including the right to be present and heard if an oral communication has not been completed. If the communication is written, or oral and completed, all other parties have the right, upon written demand, to a special hearing to respond to the ex parte communication.
- c. Whether or not any party requests the opportunity to respond to an ex parte communication made in violation of Iowa Code section 17A.17(2), the employment appeal board shall include such communication in the official record of the contested case.

These rules are intended to implement Iowa Code section 10A.601.

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